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731267—47

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 854

CESARIO CAMPA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 88–90) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered December 3, 1946 (R. 90). On January 2, 1947, by order of Mr. Justice Black, the time for filing a petition for a writ of certiorari was extended to January 8 (R. 91), and the petition was filed January 6, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTION PRESENTED

Whether the evidence is sufficient to support petitioner's conviction of knowingly and falsely representing himself to be a citizen.

STATUTE INVOLVED

Section 346 of the Nationality Act of 1940, 54 Stat. 1163 (8 U. S. C. 746), provides in part:

> (a) It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship, or otherwise, and whether an employee of the Government of the United States or not—
>
> * * * * *
>
> (18) Knowingly to falsely represent himself to be a citizen of the United States without having been naturalized or admitted to citizenship, or without otherwise being a citizen of the United States.
>
> * * * * *
>
> (d) Any person violating any provision of subsection (a) of this section shall be fined not more than $5,000, or imprisoned not more than five years, or both.

STATEMENT

On October 4, 1944, an indictment in two counts was returned against petitioner in the District Court for the Western District of Texas, charging violations of Section 346 of the Nationality Act of 1940 (*supra*) in that on January 30, 1942, and October 7, 1943, being an alien, he knowingly and falsely represented himself to be a citizen

of the United States without having been naturalized and admitted to citizenship (R. 3). After a jury trial, petitioner was found guilty on both counts (R. 71). He was sentenced to imprisonment for a year and a day on each count, the sentences to run consecutively, but execution of the sentence on the second count was suspended and he was placed on probation for five years to begin upon termination of the sentence on the first count (R. 73–76). On appeal to the Circuit Court of Appeals for the Fifth Circuit, the judgment of conviction was affirmed (R. 88–90).

The evidence adduced at petitioner's trial may be summarized as follows:

On January 30, 1942, petitioner applied for a poll tax receipt in San Antonio, Texas. He swore to the clerk in the tax collector's office that he was a citizen of the United States by birth in Texas. (R. 6–8.) On October 7, 1943, petitioner again applied for a poll tax receipt. The clerk who made out the receipt on this occasion testified that she "understood [petitioner] to say that he was born in Mexico, because I put it down 'Mexico.' Then I said, 'Are you naturalized?' and he said, 'No,' and he said he was born in Texas, and so I struck out the 'naturalized' and left him 'native born'" (R. 8–10).

On September 11, 1918, petitioner registered for the draft. He stated then that he was an alien, a citizen of Mexico (R. 16–17). On May 2,

1923, he filed a declaration of intention to become a citizen. He stated therein that he was born in Losancos, Jalisco, Mexico, on August 27, 1884, and that he entered the United States at Galveston, Texas, on September 5, 1914 (R. 14–15). A certificate of petitioner's marriage, dated February 22, 1908, stated that he was a native of Guadalajara, Jalisco, Mexico (R. 18–19). Several certificates attesting to the births of petitioner's children, issued in 1909, 1912, and 1913, also stated that he was a native of Guadalajara (R. 20–25).

In 1931, petitioner told an F. B. I. agent who was a witness at the trial that he was not a citizen of the United States; that he was "from Mexico" and had entered the United States at Laredo, Texas; and that he had filed a declaration of intention but had permitted it to lapse (R. 11–12). In 1932, he told another witness that he was not a citizen of the United States and that he was born in Mexico (R. 34). In 1934 and 1935, respectively, he told two other witnesses, in their capacities as relief officials, that he was born in Mexico (R. 28–29, 30–31). A poll tax receipt issued to petitioner in 1936 indicated that he was born in Mexico and that he was a naturalized citizen (R. 55–56).

Petitioner, taking the stand in his own defense, testified that he thought he was born in Mexico until after he filed his declaration of intention; that in September 1924, he received a letter from

his mother in which she said "that her smaller boys had told her that he * * * was trying to complete his intentions for an American citizen, and not to intend that, that he was crazy because he was born at Brownsville—not to put in his papers, because he was born in Brownsville" (R. 47). He could not produce the letter because he had burned it, together with other correspondence, some years before. (R. 42, 44, 46–49.) He denied that he had ever told the government witnesses that he was born in Mexico (R. 45–46). He admitted that he had been convicted of perjury in 1932 (R. 50).

A younger brother of petitioner testified that he saw their mother write a letter to petitioner in September 1924, advising him that he was born in Brownsville. He also testified that his mother died two or three years prior to the trial. (R. 58–59).

The trial judge charged the jury, *inter alia*, that the burden was upon the Government "to establish beyond a reasonable doubt that the defendant was an alien, a citizen of * * * Mexico; and that on the dates set out in the indictment he knowingly represented himself to be a citizen of the United States * * *"; that "if you find from the evidence that the defendant was born in Texas, or if you have a reasonable doubt thereof, you will find him not guilty * * *"; and that "if you find from the evidence that on the dates alleged in the indictment, the defendant then be-

lieved that he was born in Texas, or if you have a reasonable doubt as to whether or not he so believed, you will find him not guilty * * *" (R. 68–69). Petitioner did not except to the charge (see R. 70–71).

ARGUMENT

Petitioner's sole contention is that the Government failed to prove his alienage by "affirmative evidence." He did not move for a directed verdict of acquittal on this ground at the trial (see R. 56, 64), but, in any event, the contention is without merit.

Petitioner does not explain what he means by the term "affirmative evidence,"[1] but we assume that he means the Government was required to establish his birth in Mexico by an authenticated birth certificate. Thus, he states in this connection: "While the Government did introduce evidence to the effect that appellant's brothers were born in Mexico,[2] yet no affirmative evidence was introduced by the Government that this appellant was born in Mexico. The burden of proof was on the Government to prove this appellant an

[1] Petitioner cites *Skiriotes* v. *Florida*, 313 U. S. 69, and *Shelton* v. *Tiffin*, 6 How. 163. We are unable to perceive that these cases have any bearing on the issue here involved.

[2] The prosecution introduced in evidence a certificate attesting to the birth in Mexico on August 14, 1884, of one Claro Campa (R. 26–27). Petitioner, who testified that he was born on August 27, 1884, stated that Claro was his brother; he could not explain how it was that the certificate gave the date of birth of a brother as only a few days before the date he claimed he was born (R. 43–44).

alien, and this was lacking" (Pet. 3). While, of course, the burden of proving that petitioner was an alien rested on the Government, obviously it was not required to establish petitioner's alienage by the type of evidence suggested by him. The record is replete with statements made by petitioner himself, some of them of the most formal nature, that he was born in Mexico. This evidence was clearly sufficient to support the jury's finding that he was not born in the United States. And the jury was justified in disbelieving petitioner's testimony that he thought he was born in Mexico until he received a letter from his mother in 1924 advising him that he was born in Brownsville, Texas, especially in view of the testimony of four government witnesses that he told them, years later, that he was born in Mexico (see p. 4, *supra*).

Nor was the proof deficient in showing that petitioner was never naturalized, a matter he does not now dispute. In this connection, the court below stated that "while the proof would have been more complete if the government had followed up the declaration of intention with evidence that it had been allowed to lapse and no certificate of naturalization had ever issued to defendant, the evidence was yet ample to support the verdict that he was an alien and that he had not been naturalized" (R. 90). One of the government witnesses, an F. B. I. agent, testified that petitioner told him in 1931, eight years after petitioner filed his declaration of intention,

that he had allowed it to lapse. And in 1943, petitioner told the clerk to whom he applied for a poll tax receipt that he was not naturalized but was born in Texas (*supra*, pp. 3, 4). Finally, petitioner did not at the trial and does not now claim that he was ever naturalized.[3]

CONCLUSION

The case was correctly decided below, and there is no conflict of decisions. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

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FEBRUARY 1947.

[3] The court below pointed out that the case is different in this respect from *Colt* v. *United States*, decided by that court on November 27, 1946, but not yet reported, in which it "reversed the judgment * * * for the complete absence of proof as to whether defendant had been naturalized" (R. 90). In the *Colt* case, which arose under the statute here involved, the Government showed that Colt had been born a Roumanian citizen, but offered no proof that he had not been naturalized. It relied on the rule applied in civil cases that a particular citizenship status will be presumed to have continued in the absence of proof to the contrary. The court below held that this presumption does not apply in a prosecution under this criminal statute.

We have lodged a copy of the *Colt* opinion with the Clerk of this Court.

U. S. GOVERNMENT PRINTING OFFICE: 1947